

REMARKS

Claims 22-42 were pending at the time of the last Communication.

Claims 22-42 are rejected.

Claims 22, 35 and 38 have been amended in this Response.

Claims are not canceled in this Response.

Accordingly, claims 22-42 are pending.

Support for the claim amendments is found in the specification as originally filed at least at pages 16-18 and figures 9-12.

In view of the following remarks and amendment submitted with a request for continued examination (RCE) under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e), Applicant respectfully requests reconsideration of claims 22-42 and issuance of the subject application.

Rejections under 35 U.S.C. § 103

Claims 22-28 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over RealPlayer G2™ © 1998 (hereinafter “RealPlayer”) as supported by the screenshots (hereinafter “Screenshots”, “Screenshot [number]”, etc.) provided along with the original PTO-892 Notice of References cited mailed 9/25/02, and the press release “Realnetworks Ships Final Release of Realsystem G2, Next Generation Media Delivery System” (hereinafter “Press Release”) provided with the PTO-892 Notice of References cited mailed 2/27/03. Applicant respectfully asserts that the rejections are moot at least in view of the claim amendments.

Claims 29-42 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over RealPlayer G2™ © 1998 (hereinafter “RealPlayer”) as supported by

1 the screenshots (hereinafter “Screenshots”, “Screenshot [number]”, etc.) provided
2 along with the original PTO-892 Notice of References cited mailed 9/25/02, and
3 the press release “Realnetworks Ships Final Release of Realsystem G2, Next
4 Generation Media Delivery System” (hereinafter “Press Release”) provided with
5 the PTO-892 Notice of References cited mailed 2/27/03 Applicant respectfully
6 asserts that the rejections are moot at least in view of the claim amendments.

7
8 *The Obviousness Standard*

9 The failure of an asserted combination to teach or suggest each and every
10 feature of a claim remains fatal to an obviousness rejection under 35 U.S.C. § 103.
11 “A factfinder should be aware, ... of the distortion caused by hindsight bias and
12 must be cautious of argument reliant upon *ex post* reasoning,” KSR Int’l Co. v.
13 Teleflex Inc., 127 S. Ct. 1727, 82 USPQ2d 1397 (Fed. Cir. 2007). Applicant
14 respectfully asserts that not every element and feature of the claims is taught or
15 suggested by the combination of references in this instance.

16 Section 2143.03 of the MPEP requires the “consideration” of every claim
17 feature in an obviousness determination. To render a claim unpatentable,
18 however, the Office must do more than merely “consider” each and every feature
19 for this claim. Instead, the asserted combination of the patents to references must
20 also teach or suggest each and every claim feature. See In re Royka, 490 F.2d 981,
21 180 USPQ 580 (CCPA 1974) (emphasis added) (to establish prima facie
22 obviousness of a claimed invention, *all the claim features* must be taught or
23 suggested by the prior art).

24 As the Board of Patent Appeal and Interferences has recently confirmed, a
25 proper obviousness determination requires that the Office make “a searching

1 comparison of the claimed invention – including all its limitations – with the
2 teaching of the prior art.” See In re Wada and Murphy, Appeal 2007-3733, citing
3 In re Ochiai, 71 F.3d 1565, 1572 (Fed. Cir. 1995). Further, the necessary presence
4 of all claim features is axiomatic, since the Supreme Court has long held that
5 obviousness is a “*question of law* based on underlying factual inquiries, including
6 ... ascertaining the differences between the claimed invention and the prior art.”
7 Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966) (emphasis added).

8 Lastly, the Applicant respectfully directs attention to MPEP § 2143, the
9 instructions of which buttress the conclusion that obviousness requires at least a
10 suggestion of all of the features of a claim.

11 In sum, it remains well-settled law that obviousness requires at least a
12 suggestion of all of the features in a claim. See In re Wada and Murphy, citing
13 CFMT, Inc. v. Yieldup Intern. Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003) and In
14 re Royka, 490 F.2d 981, 985 (CCPA 1974)).

15
16 **Claim 22** as amended recites:

17 ...a display device for rendering a graphical user interface of a Web
18 browser displaying Web page content in a browser pane, and having at least
19 one speaker for playing streaming media, the graphical user interface of the
20 Web browser comprising:

21 a) a radio toolbar displaying radio-toolbar buttons for
22 controlling the streaming media irrespective of the Web page content being
23 browsed, the radio-toolbar buttons including...

24 b) a cursor controllable by a user to select the radio-toolbar
25 buttons, the cursor configured to highlight a radio-toolbar button while

1 passing over that radio-toolbar button and to display a rollover tool tip
2 describing a corresponding function of the highlighted radio-toolbar button;
3 and

4 c) the radio toolbar and the cursor configured to control the
5 graphical user interface of the Web browser via access to a shared memory
6 established on the computer system, wherein the shared memory is shared
7 between a radio client and a radio server to maintain a current playback-
8 state of the radio server.

9 (amendments underlined.)

10
11 Applicant asserts that neither of the cited reference, either alone or in
12 combination have been shown to disclose, teach or suggest the claim as amended.
13 Applicant further notes that the new recitations of claim 22 have not been
14 presented in their entirety in any previous version of the claims. Thus, at least by
15 virtue of these new recitations, the rejection of claim 22 is overcome.

16 Accordingly, Applicant respectfully requests that the rejection of this
17 claim be withdrawn and the claim passed to issuance.

18 The dependent claims are allowable by virtue of their dependency on
19 independent claim 22.

20
21 **Claim 35** as amended recites:

22 A method of managing streaming media on a computer system having a
23 speaker for playing streaming media and a display device for rendering a
24 graphical user interface of *a Web browser*, the graphical user interface of
25 the Web browser including a radio toolbar, the method comprising:

1 *launching* an instance of the Web browser;
2 creating *a radio client upon the launching of the Web browser*;...
3 ...establishing *a shared memory* on the computer system between
4 the radio client and the radio server to maintain a current playback-state of
5 the radio server; ... and
6 requesting that the radio server stream content of the radio station.
7 (Emphasis added and amendments underlined.)

8
9 Applicant asserts that neither of the cited reference, either alone or in
10 combination have been shown to disclose, teach or suggest the claim as amended.
11 Particularly Applicant highlights “establishing *a shared memory* on the computer
12 system between the radio client and the radio server to maintain a current
13 playback-state of the radio server” as recited in the claim. Applicant further notes
14 that the new recitations of claim 35 affirmatively including each action of the
15 method have not been presented in their entirety in any previous version of the
16 claims. Thus, at least by virtue of these new recitations, the rejection of claim 35
17 is overcome.

18 Accordingly, Applicant respectfully requests that the rejection of this
19 claim be withdrawn and the claim passed to issuance.

20 The dependent claims are allowable by virtue of their dependency on
21 independent claim 35.

22
23 **Claim 38** recites:

24 ...a graphical user interface of *a Web browser, the graphical user interface*
25 *of the Web browser including a radio toolbar* having a play/stop button, a

1 mute button, a volume slider, a radio-stations button, and an information
2 status area, a method comprising:

3 establishing a shared memory on the computer system between a
4 radio client and a radio server to maintain a current playback-state of the
5 radio server;...

6 *inactivating* the mute button if the computer system *cannot modify*
7 *streaming media playback volume* and activating the mute button
8 otherwise;

9 *inactivating the volume slider if the computer system cannot modify*
10 *streaming media playback volume* and activating the volume slider to
11 control the streaming media playback volume otherwise;

12 *presenting a drop-down list that includes an “add station to*
13 *favorites” entry and a list of recently used radio stations upon user selection*
14 *of the radio-stations button...*

15 (Emphasis added and amendment underlined.)

16
17 Applicant asserts that neither of the cited reference, either alone or in
18 combination have been shown to disclose, teach or suggest the claim as amended.
19 Particularly Applicant highlights “establishing *a shared memory* on the computer
20 system between the radio client and the radio server to maintain a current
21 playback-state of the radio server” as recited in the claim. Applicant further notes
22 that the new recitations of claim 38 have not been presented in their entirety in any
23 previous version of the claims. Thus, at least by virtue of these new recitations,
24 the rejection of claim 38 is overcome.
25

1 Accordingly, Applicant respectfully requests that the rejection of this
2 claim be withdrawn and the claim passed to issuance.

3 The dependent claims are allowable by virtue of their dependency on independent
4 claim 38.

5
6
7 **Conclusion**

8 All pending claims, 22-42, are believed to be in condition for allowance.
9 Applicant respectfully requests reconsideration and prompt issuance of the
10 application. If any issues remain that prevent issuance of this application, the
11 Examiner is urged to contact the undersigned representative for the Applicant
12 before issuing a subsequent Action.

13
14
15 Respectfully Submitted,

16
17 Lee & Hayes, PLLC
Representatives for Applicant

18
19 Date: 01/04/2010

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